

APPEAL NO. 031512  
FILED JULY 25, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 21, 2003. The hearing officer determined that: (1) the appellant/cross-respondent (claimant) did not sustain a compensable injury on \_\_\_\_\_; (2) the claimant did not have disability; and (3) the respondent/cross-appellant (carrier) did not waive its right to dispute the claimed injury, because it timely contested the injury in accordance with Section 409.021. The claimant appealed these determinations on sufficiency of the evidence grounds. The carrier responded, urging affirmance. The carrier cross-appealed the hearing officer's finding of fact that the claimant has been unable to work from October 10, 2002, through the date of the hearing due to the claimed injuries. The claimant did not file a cross-response.

DECISION

Affirmed.

**COMPENSABLE INJURY AND DISABILITY**

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

**WAIVER**

The hearing officer did not err in determining that the carrier did not waive its right to dispute the claimed injury under Section 409.021. The claimant contends that the carrier failed to serve him a copy of its "Cert 21" and, thereby, waived its right to dispute the claimed injury. The treatment of "Cert 21s" is currently addressed in Texas Workers' Compensation Commission Advisory No. 2002-15, dated September 12, 2002, and requires only that a carrier send the document to the Texas Workers' Compensation Commission. See also Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. To be clear, we have held that a carrier's failure to give written notification to the claimant, within a 7-day period, when the carrier agrees to accept a claimed injury, as in this case, does not result in waiver of its right to contest compensability. Texas Workers' Compensation Commission Appeal No. 030768-s, decided May 12, 2003.

The claimant also asserts that the carrier failed to timely dispute the claimed injury and, therefore, waived its right to contest compensability. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **COMMERCE & INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge